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10/678,860	10/02/2003	Bernd Greifeneder	06896/100M098-US1	2441

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EXAMINER	
ABEL JALIL, NEVEEN	
ART UNIT	**PAPER NUMBER**
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.** 10/678,860	**Applicant(s)** GREIFENEDER ET AL.	
	Examiner Neveen Abel-Jalil	**Art Unit** 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *June 25, 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 16-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25-June -2007 has been entered.

2. The amendment filed on 25-June -2007 has been received and entered. Claims 1-14, and 16-20 are pending.

3. Applicant's amendment has overcome the previous rejections under 35 USC 112, second and clam objections.

Specification

4. The disclosure is objected to because of the following informalities: The recitation of claim 1 "computer readable medium" not in the specification. See MPEP 608.01(o) - Failing to provide proper antecedent basis for the claimed subject matter. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1, recite "scanning said one or more computer systems based on the instructions acquired from the configuration to generate a list of the accessible data sources in said scanned computer systems".

The Examiner finds no support or description in Applicant's specification to ascertain the meaning and functionality involved in said claimed, "scanning". Furthermore, it's unclear what is being scanned? Is the local computer or the remote targets to be monitored?

7. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6; recite, "embedding of expert knowledge in data source monitoring software".

The Examiner finds no support or description in Applicant's specification to ascertain the meaning and functionality involved in said claimed, "embedding or knowledge or expert". Furthermore, its unclear what or how this process and functionality is taking place? The only support found for the recitation is an exact duplicate in introductory paragraph 0020 "summary of the invention". There is no description what-so-ever on how this limitaion takes place. Clarification is required.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 and 20 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

Claim 1 is directed to a computer system (per preamble), while reciting a limitaion of a computer and another of a computer readable medium, are they not the same? Are they two different entities of the system existing separately, how can one computer system hold both a computer and a computer readable medium without them interacting with each other? There appears to be no relationship between all three.

The claim as it is written now, appears to be an overlap of two statutory categories since the claims are either directed to system or a medium but not both. Correction is required.

Claim 1, line 14, recite "instructions… to be utilized to query" in the middle of two other limitations without it being tied to the other limitations and without it making clear sense. It confusing how those instructions are utilized in a query that is not executed to collected any information? And how those instructions are using in the "scanning" limitaion to "generate a list" when the instruction were only attributed to a "query". Furthermore, the only time the query comes into effect is at the very last sentence of the claim where a recitation of "querying at least one of said computer systems for monitoring information corresponding to the at least one selected metric" without any indication that the actual query results are in fact used in the monitoring, and wherein "for monitoring" is intended use and not actually giving any indication of the "monitoring" taking place or of what is being monitored. Is "probing" in claim 3 any different from "querying" in claim1, and if so how do the two relate? It also appears from Applicant's specification paragraph 0055, the probe engine queries and validates various pieces, which is missing from the claims, in fact contradicts the claimed limitaion of the "configuration" querying the data sources.

In claim 1, line 23, the recitation of "determining the identified metric" appears to be out of order since it is recited after the step of "selecting" a metric. Is the metric "identified" again after it was selected? What is the "determining" based on? Clarification is required.

In claim 20, line 1, the recitation of "the step of populating the list" lacks antecedent basis. There was no previous mention of "populating a list" and further it would be contradictory to state that "list was initially empty" since the list was "identified" in claim 6 of which claim 20 dependents (indicating the list has already been populated and only identified after the steps of claim 6 were preformed; therefore, can't have been empty prior to that.

9. Claims 1, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There's little or no specific description as to what constitute a "service" in Applicant's specification. Is it a service provided by the system, or application, or probe? The only close description to cover the type of service is found in paragraph 0043, which is very broad lacking any real-world examples to ascertain it meaning with the context of the invention.

10. Claims 1 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: The data source detection module loads the configuration and performs the processing of the configuration as disclosed in Applicant's specification paragraph 0048. Applicant's specification paragraph 0049, and 0050, both teach the probe engine loads the information from the service table and starts the process of probing for a service, which is too missing from the claim.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-14, and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Masters et al. (U.S. Patent No. 7,051,098 B2) -As best understood in light of the 112, first, and second rejections above.

As to claim 1, Masters et al. discloses a computer-implemented system for managing and monitoring one or more computer systems, said computer implemented system comprising:

a computer having a processor, a storage device, a memory device and a network device configured to receive monitoring information from the one or more computer systems, the monitoring information concerning the operation of the one or more respective computer systems (See Figure 1B); and

a computer readable medium encoded with computer program (See Figure 1A, wherein "medium" reads on "operating system") configured to perform the steps of:

using a data source detection module to identify accessible data sources in said one or more computer systems (See column 7, lines 33-55);

acquiring instructions from a configuration stored in the computer storage device to be utilized to query at least one of said computer systems (See column 8, lines 43-53), said configuration including a service table identifying one or more services that are useable to monitor at least one of said computer systems (See column 47, lines 11-25, and see column 31, lines 1-10, service appears to broadly described in the specification and may not even exist for some sources, therefore, it is broadly interpreted to be any broad functionality), a detection table identifying information capable of being detected in the at least one of the accessible data sources (See column 46, lines 29-39, wherein only "interested processes" are being tabled by the detecting host monitor, and wherein the recitation of "capable" is interpreted as optional capability but not in fact a functionality of the system, and it suggested to be changed to "configured to"), and a metric table identifying a metric for the at least one of the accessible data sources (See column 13, lines 18-24, wherein any collected metric is stored and thus placed in a table);

selecting at least one metric related to at least one of the accessible data sources (See Figure 7A, shows the metric "CPU utilization" , and metric "Packets in" selected by user for view);

scanning said one or more computer systems based on the instructions acquired from the configuration to generate a list of the accessible data sources in said scanned computer systems (See column 10, lines 40-52, and see column 11, lines 31-50);

said list comprising a subset of combinations of said data sources specified by said configuration (See column 8, lines 60-65, also see column 10, lines 64-67);

determining the identified metric (See Figure 7A, shows the metric "CPU utilization" , and metric "Packets in" selected by user for view, and see column 11, lines 1-10); and

querying at least one of said compute systems for monitoring information corresponding to the at least one selected metric (See Figure 7A, shows the metric "CPU utilization" , and metric "Packets in" selected by user for view).

As to claim 2, Masters et al. discloses wherein the data sources are monitoring information sources in said one or more computer systems (See Figure 1B, shows host monitors); and

the at least one metric is related to said monitoring information sources, said metric being detected by the data source detection module to output said list of said accessible data sources

(See column 56, lines 25-33, claim language, it is unclear which metric is being referenced, the selected or the identified one).

As to claim 3, Masters et al. discloses further comprising:

provide monitoring information of one of said computer systems (See column 10, lines 40-52); and

probe said monitoring information to monitor the one of said computer systems (See Figure 1B, shows various agents i.e. probe).

As to claim 4, Masters et al. discloses further configured to:

collect performance information from said data sources utilizing data collection tools (See column 9, lines 47-59), and

receive from a user a selection of said data sources for monitoring (See column 24, lines 45-60, wherein the recitation of "for" is interpreted as intended use and should be replaced with "to be").

As to claim 5, Masters et al. discloses further configured to:

provide an interactive graphical user interface for user interaction with said data source detection module and said data collection tools (See column 24, lines 45-60).

As to claim 6, Masters et al. discloses a method for automated detection of monitoring data sources of at least one computer system, said method comprising the steps of:

providing a configuration containing instructions to query at least one of said at least one computer system (See corresponding rejection in claim 1 above), said configuration comprising a service tale identifying one or more services that are useable to monitor said at least one computer system (See corresponding rejection in claim 1 above), a detection table identifying information to discover at least one for the monitoring data sources (See corresponding rejection in claim 1 above), and a metric table identifying a metric for the at least one of the monitoring data sources (See corresponding rejection in claim 1 above);

providing a data detection module (See corresponding rejection in claim 1 above);

identifying, by said data detection module using said configuration, accessible data sources of at least one of said at least one computer system (See corresponding rejection in claim 1 above);

collecting from at least one of said computer systems meta and performance information of said accessible data sources of at least one of said at least one computer system (See Figure 10A, shows meta and performance data);

embedding an expert's knowledge into a monitoring-configuration in software used in said step of collecting meta and performance information (See column 42, lines 35-39);

presenting said meta and performance information to a user (See Figure 5A); and

presenting a list of said identified accessible data resources to said user (See corresponding rejection in claim 1 above).

As to claim 7, Masters et al. comprising the step of:

receiving access information from said user, wherein said access information comprises one member of the group consisting of a username and a password (See column 15, lines 55-56).

As to claim 8, Masters et al. discloses comprising the steps of:

receiving a list of data sources chosen by said user (See Figure 10A, shows meta and performance data for user selected data sources);

extracting said meta and performance data from said chosen data sources (See Figure 10A, shows meta and performance data); and

presenting said meta and performance data to said user (See Figure 10A, shows meta and performance data).

As to claim 9, Masters et al. discloses comprising the step of:

utilizing a probe engine to verify whether a service of one of said at least one computer system is responding determining said meta and performance data of an environment in which said service is running, in response to said probe engine verifying said service is running (See column 11, lines 47-50, and see column 19, lines 4-24).

As to claim 10, Masters et al. discloses wherein the service probing step is performed for each service of said at least one computer system (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute service type).

As to claim 11, Masters et al. discloses comprising the step of:

utilizing said probe engine to identify at least one monitoring information source in said at least one computer system and stores said monitoring information source in a list of said at least one identified monitoring information sources (See column 24, lines 17-29, wherein "probe" is read on "agent").

As to claim 12, Masters et al. discloses wherein the monitoring information source probing step utilizes the probe engine to identify the monitoring information source and storing the monitoring information source in the list of detected monitored information sources are performed for each monitoring information source of said at least one computer system (See column 20, lines 1-10).

As to claim 13, Masters et al. discloses comprising the step of:

utilizing said probe engine to determine a metric associated with each of said monitoring information sources (See Figure 10A, shows meta and performance data).

As to claim 14, Masters et al. discloses wherein said meta information comprises set-up information of said at least one computer system (See Figure 10A, shows meta and performance data).

As to claim 16, Masters et al. discloses wherein said list receiving step comprises receiving a range of data sources of said network environment, said range being specified by said user (See column 49, lines 8-26).

As to claim 17, Masters et al. discloses wherein:

The monitoring information is associated with a first service type (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type);

the probing step corresponds to a second service type (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type); and

the probing step is performed in response to the first service type of the monitoring information (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type).

As to claim 18, Masters et al. discloses wherein the lists of the accessible data sources and the detected metrics are populated while the probing step identifies all of the accessible data sources and detected metrics (See column 11, lines 1-10).

As to claim 19, Masters et al. discloses wherein each of said services identified in said service table are associated with a service type, the method further comprising the step of activating a probe engine according to at least one service type, wherein the probe engine probes a monitoring information service to monitor information of the computer system (See column 25, lines 24-45, wherein "service type" is read on applications "specific to host system").

As to claim 20, Masters et al. discloses further comprising the step of populating the list of the accessible data sources, wherein the list of the accessible data sources is initially empty (See column 24, lines 45-66, wherein "empty" reads on "user controlled" and can be populated according to modification made to the configuration).

Response to Arguments

13. Applicant's arguments with respect to claims 1-14, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Matsumoto et al. (U.S. Pub. No. 2002/0062237 A1) teaches transactional monitoring system for remote targets.

Bendich et al. (U.S. Patent No. 7,167,915 B2) teaches monitoring resource used by computer applications across a network.

Chong et al. (U.S. Pub. No. 2004/0064552 A1) teaches monitoring performance of applications in a distributed environment.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5: 30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neveen Abel-Jalil
Primary Examiner
September 4, 2007